

D. E. PACK

IBLA 77-60

Decided May 26, 1977

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing appellant's protest of the first drawee for parcel WY 76 (W 56948) in the September 1976 list of parcels available for simultaneous filing of oil and gas lease offers.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings! ! Oil and Gas Leases:  
Applications: Sole Party in Interest

The presence in a drawing of simultaneously filed noncompetitive oil and gas lease offers of several entry cards signed by different offerors bearing the common mailing address of a leasing service which has an agreement to pay the first year rental for the account of any successful offeror utilizing its services does not, in the absence of an enforceable agreement under which the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, establish an interest of the leasing service in the various lease offers constituting an improper multiple filing.

APPEARANCES: D. E. Pack, pro se; James S. Kimmel, Esq., Littleton, Colorado, for appellee, George W. West, Jr.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dismissing appellant's protest of the first drawn lease offer for parcel WY 76 in the September 1976 list of parcels available for simultaneous filing

of noncompetitive oil and gas lease offers. The basis of appellant's initial protest was an allegation that George W. West, Jr., whose entry card was drawn first, may be a fictitious person and that the offeror's signature might be affixed with a rubber stamp. The BLM dismissed the protest for lack of proof of the allegations made by the protestant, noting that the drawing entry card bears what appears to be an original signature (not a rubber stamp).

Appellant raises several contentions in his statement of reasons for appeal. Most significantly, appellant alleges that the filing of lease offers through a leasing service such as in this case gives rise to an improper multiple filing requiring rejection of the offers under 43 CFR 3112.5-2. Appellant cites an advertisement, allegedly published by the leasing service whose address appears on the winning card, in which it is stated that the leasing service will pay the first year rental charge should a client's offer be drawn first, subject to the duty of the client to reimburse the leasing service for the payment. Appellant argues that this causes the leasing service to have an interest in the lease offers filed on behalf of its clients, thus creating an improper multiple filing. The insertion of the mailing address of the leasing service on the entry cards submitted on behalf of its clients is also cited by appellant in support of his allegation of collusion between the leasing service and its offeror clients to give either or both a greater probability of winning a lease in violation of 43 CFR 3112.5-2.

Appellant also raises some other allegations which do not require any detailed discussion. It is asserted that the use by an offeror on the drawing entry card of the mailing address of a leasing service is a criminal violation of 18 U.S.C. § 1001 (1970) (involving misrepresentation, false statements, etc.) because this is not the offeror's "true" address. It is not clear what appellant means by "true" address, but it seems obvious that a mailing address is not invalid merely because it is different from a person's residence address or business address. The use of a leasing service which places its own mailing address on the offer is not a violation of the regulations. See R. M. Barton, 4 IBLA 229, 231 (1972); John V. Steffens, 74 I.D. 46 (1967). Therefore, appellant's contention is without merit.

There has also been a question raised by appellant as to the existence of the offeror, George W. West, Jr. However, no probative evidence has been presented of a false identity. Indeed, counsel for the successful drawee has submitted an affidavit that George W. West, Jr., does exist and is not a fictitious identity. The burden is on the protestant to show justification for the disqualification of the successful drawee in a simultaneous filing.

Competent proof of violation of the regulations and not mere accusations must be presented. Harry L. Matthews, 29 IBLA 240, 242 (1977); Georgette B. Lee, 3 IBLA 171 (1971). Therefore, appellant's allegation need not be considered further.

[1] Appellant is challenging the presence in a drawing of simultaneously filed noncompetitive oil and gas lease offers under 43 CFR Subpart 3112 of several entry cards signed and submitted by different offerors bearing the common mailing address of a leasing service which has an agreement to pay the first year's rental for the account of any successful offeror utilizing its services. The issue raised is whether this establishes an interest on the part of the leasing service in the several offers thus creating an improper multiple filing under 43 CFR 3112.5-2.

The regulations at 43 CFR Subpart 3112 govern the drawing of simultaneously filed noncompetitive oil and gas lease offers. Multiple filings of oil and gas lease offers in a drawing are governed by 43 CFR 3112.5-2 which provides in part as follows:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected. Similarly, where an agent or broker files an offer to lease for the same lands in behalf of more than one offeror under an agreement that, if a lease issues to any of such offerors, the agent or broker will participate in any proceeds derived from such lease, the agent or broker obtains thereby a greater probability of success in obtaining a share in the proceeds of the lease and all such offers filed by such agent or broker will also be rejected. \* \* \*

43 CFR 3112.5-2.

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to

transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest and the offeror is not precluded from stating that he is the sole party in interest in the offer. R. M. Barton, 4 IBLA 229, 232 (1972); John V. Steffens, 74 I.D. 46 (1967). Thus, even assuming several offers including that of the successful drawee were filed in this case through a leasing service, using the leasing service address, and pursuant to an agreement by the service to pay the first year rental for the account of the offeror subject to reimbursement, we are unable to find that the leasing service had an interest in the offer creating an improper multiple filing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis  
Administrative Judge

I concur:

Joseph W. Goss  
Administrative Judge

ADMINISTRATIVE JUDGE FREDERICK FISHMAN CONCURRING SPECIALLY:

On the facts, exclusive of bare assertions, contained in the record, I must reluctantly concur in the main opinion.

It seems highly anomalous to me that a leasing service would expend the first year's rental (subject to reimbursement), without any expectation of an interest in the lease.

The Bureau of Land Management appropriately might consider an investigation as to the modus operandi of leasing services to determine whether the letter or spirit of the regulations is being violated. The Bureau might also wish to consider the propriety and feasibility of an appropriate regulatory amendment.

Frederick Fishman  
Administrative Judge

